

ESTTA Tracking number: **ESTTA573832**

Filing date: **11/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Hoop Culture, Inc.		
Entity	Corporation	Citizenship	Florida
Address	P.O. Box 181785 Casselberry, FL 32718-1785 UNITED STATES		

Attorney information	M. Scott Alprin Alprin Law Offices 5 Pinehurst Circle, N.W. Washington, DC 20015 UNITED STATES trademarks@alprinlaw.com Phone:202-659-8225
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Registration Subject to Cancellation

Registration No	2412709	Registration date	12/12/2000
Registrant	ROEHL, LANCE P.O. BOX 2845 SARATOGA, CA 95070 USX		

Goods/Services Subject to Cancellation

Class 025. First Use: 2000/06/16 First Use In Commerce: 2000/06/16
All goods and services in the class are cancelled, namely: wearing apparel, namely T-shirt, shirts, shorts, pants, sweat shirts, sweat pants, hats, visors, shoes, sandals,[and belts]

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Hoop Culture v. Roehl - Petition to Cancel - 11-29-13 PDF.pdf(17407 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/M. Scott Alprin/
Name	M. Scott Alprin
Date	11/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HOOP CULTURE, INC.)	
)	
)	
Opposer,)	
)	
v.)	Cancellation No.: _____
)	Petitioned Mark: Reg. No. 2412709
LANCE ROEHL)	
)	
Registrant.)	
)	

PETITION TO CANCEL

Petitioner Hoop Culture, Inc. (“Petitioner”), a company having an address of P.O. Box 181785 Casselberry, Florida 32718, believes that it is being damaged by the existence on the Principal Register of Reg. No. 2412709 for the mark “GAME 7,” for “Short-sleeved or long-sleeved t-shirts,” owned by Registrant Lance Roehl (“Mr. Roehl”), which was transferred to Mr. Roehl in violation of Section 10 of the Trademark Act.

As grounds for this Petition, it is alleged that:

1. Mr. Roehl filed a trademark infringement lawsuit in the United States District Court Northern District of California on October 7, 2013.
2. In the Complaint, Mr. Roehl relied in part on Reg. No. 2412709 as evidence of his exclusive rights to the term “GAME 7” with respect to Class 25 goods.
3. Reg. No. 2412709 (then, Ser. No. 74645716) was filed with the USPTO on March 13, 1995 under an intent-to-use basis by NO FEAR, INC.
4. A Notice of Allowance for Reg. No. 2412709 (then, Ser. No. 74645716) was issued on January 25, 2000.
5. An assignment was executed by the President of NO FEAR, INC. on May 11, 2000, assigning Reg. No. 2412709 (then, Ser. No. 74645716) to Mr. Roehl. The assignment was recorded with the USPTO on June 26, 2000, at Reel No. 2113, Frame No. 0175. *See Exhibit 1.*
6. The assignment document made no mention of Mr. Roehl being a successor to NO FEAR, INC.’s business, or to a portion of the business to which the mark pertained.
7. Mr. Roehl filed a Statement of Use for Reg. No. 2412709 (then, Ser. No. 74645716) with the USPTO on June 21, 2000, after the assignment had been executed. *See Exhibit 1.*

8. The Statement of Use was accepted, and Mr. Roehl's "GAME 7" mark was registered on December 12, 2000 as Reg. No. 2412709.
9. Trademark Manual of Examining Procedure (TMEP) Section 501.01(a) states:

In an application under §1(b) of the Trademark Act, 15 U.S.C. §1051(b), the applicant cannot assign the application before the applicant files an allegation of use (i.e., either an amendment to allege use under 15 U.S.C. §1051(c) or a statement of use under 15 U.S.C. §1051(d)), except to a successor to the applicant's business, or portion of the business to which the mark pertains, if that business is ongoing and existing. Section 10 of the Trademark Act, 15 U.S.C. §1060; 37 C.F.R. §3.16.
10. Upon information and belief, Mr. Roehl was not a successor to NO FEAR, INC.'s business, or to a portion of the business to which the mark in question pertained.
11. NO FEAR, INC. and Mr. Roehl violated Section 10 of the Trademark Act by entering into an agreement in which Ser. No. 74645716 (which ultimately became Reg. No. 2412709), an intent-to-use application for which no Statement of Use had yet been filed, was transferred by NO FEAR, INC. to Mr. Roehl.
12. In light of the foregoing, Reg. No. 2412709 should be cancelled due to violation of Section 10 of the Trademark Act.
13. Petitioner asserts, as well, that Mr. Roehl committed fraud upon the USPTO when he submitted his Statement of Use on June 21, 2000, by indicating that the "GAME 7" mark was in use in commerce with all of the following goods: "wearing apparel, namely T-shirt, shirts, shorts, pants, sweat shirts, sweat pants, hats, visors, shoes, sandals, and belts."
14. Upon information and belief, Mr. Roehl's mark was not in use in commerce in connection with any of the listed goods on June 21, 2000, the date that Mr. Roehl filed his Statement of Use for Reg. No. 2412709 (then, Ser. No. 74645716). Accordingly, Mr. Roehl committed fraud on the USPTO in obtaining his registration, and it should therefore be cancelled.
15. In the alternative, if all of the goods were not in use in commerce at the time that the Statement of Use for Reg. No. 2412709 (then, Ser. No. 74645716), then Petitioner requests that those goods that were not in use in commerce be deleted from the registration under Section 18 of the Trademark Act.

Petitioner believes that it is being damaged and would be damaged in the future by the continued existence on the Principal Register of Reg. No. 2412709, with all the favorable presumptions conferred thereupon, and that, if the registration was allowed to stand, Mr. Roehl

would continue to enjoy unlawful gain and advantage to which he is not entitled under the Trademark Act.

WHEREFORE, Opposer respectfully requests that Reg. No. 2412709 be cancelled.

The \$300.00 statutory filing fee is being submitted electronically herewith.

Respectfully submitted,

HOOP CULTURE, INC.

Date: November 29, 2013

/M. Scott Alprin/
M. Scott Alprin
Counsel for Petitioner
Alprin Law Offices
5 Pinehurst Circle, N.W.
Washington, D.C. 20015
USA
202-659-8225 (phone)
202-659-0441 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** will be served on Mr. Lance Roehl by mailing said copy on November 30, 2013, via United States Postal Service First Class Mail, postage prepaid, to:

Lance Roehl
P.O. Box 2845
Saratoga, California 95070
United States.

Moreover, a copy of the Notice of Opposition will be forward to counsel for Mr. Roehl in a trademark infringement lawsuit filed in the United States District Court Northern District of California on October 7, 2013 by Mr. Roehl against the Hoop Culture, Inc. involving Reg. No. 2412709, namely, Jeff Faucette, Esq. of Skaggs Faucette LLP, via e-mail, on November 29, 2013, to the following address:

jeff@skaggsfaucette.com.

/M. Scott Alprin/
M. Scott Alprin